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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

BILL NUMBER: House Bill 4845, as introduced
TOPIC: Provide for general amendments to no-fault notices and time limitations
SPONSOR: Representative Dan Scripps
CO-SPONSORS: Representatives Andrew Kandrevas, Harold Haugh, David Nathan, Jon Switalski, Sarah Roberts, Bob Constan, Jennifer Haase, Jim Slezak, Vicki Barnett, Dian Slavens, Alma Wheeler-Smith, Rebekah Warren
COMMITTEE: House Committee on Judiciary
Analysis Done: May 11, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

A Michigan no-fault policy contains three mandatory coverages: personal injury protection (PIP), property protection (PPI) and residual bodily injury and property damage liability insurance (BI/PD). The PIP coverage provides unlimited medical, hospital and rehabilitation for all reasonable and necessary expenses related to an accident. In a serious accident this can result in hundreds of thousands of dollars of expenses.

The cost of coverage for catastrophic auto accident injuries is reflected in the PIP portion of the policy. Under the no-fault statute, policyholders seek coverage for these unlimited benefits from their own insurance company rather than having to sue the at-fault driver for coverage. The current no-fault statute requires a policyholder to file an action for recovery of PIP benefits not later than one year after the date of the accident. However, over the last several years there have been a number of court cases such as *Cameron v ACIA*, 263 Mich App 95 (2004) that have restricted the claim filing period, especially for minors or those who are mentally incompetent. The proposed legislation attempts to address this issue.

DESCRIPTION OF BILL

The proposed legislation would amend Sections 3141 and 3145 of the Michigan Insurance Code (MCL 500.3141 and MCL 500.3145) to protect the current one-year time period for filing a claim for PIP benefits and to protect the interests of minors and those who are mentally

incompetent by tolling the 1-year period until such time as the individual reaches 19 years of age or the mental incompetency is unequivocally and irrevocably removed.

SUMMARY OF ARGUMENTS

Pro

The Insurance Code requires that a claim for medical benefits must be filed no later than one year after the date of the accident. Some insurance companies have adopted specific policy language contractually altering the one-year claim filing period to restrict individuals from qualifying for benefits. An injured person with claims filed after the deadline would be forced to file suit against the insurer, and these additional litigation costs are passed on to all policyholders. The current no-fault statute is silent on whether insurers may adopt policy language designed to alter the one-year claim filing period. The proposed legislation would protect a policyholder's rights by clarifying that an insurance company could not shorten the one-year claim filing period.

It has long been held that children and the mentally incompetent should not be held to this one-year standard because they do not have the legal capacity to protect their rights. Recent court cases called into question this protection for children and mentally incompetent individuals. Without this protection, the cost of caring for children or mentally incompetent individuals injured in an auto accident is shifted from no-fault insurers to health insurers or to Medicaid. Obviously, these costs would in turn be passed on to all Michigan citizens. The proposed legislation would protect the interests of minors and those who are mentally incompetent by allowing them to be excluded from this one-year claim filing period.

Con

The proposed legislation would require insurers to hold funds in reserve for a much longer period of time in the event that the auto insurer should become liable for repaying its policyholder for any such subrogation to a health insurer. This change would make the reserving process much more difficult and may cause the company to either under-reserve or over-reserve, which may affect the insurance rates for all policyholders of that particular company and/or the financial stability of the company.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to monitor and enforce any new restrictions on policy language and/or interpretation of the time limit placed on the filing of a claim and to inform consumers of these changes.

Revenue:

Comments:

(b) To the Department of Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None known.

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

None known.

ANY OTHER PERTINENT INFORMATION

The proposed legislation is similar to legislation that has been previously introduced.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.



Ken Ross
Commissioner

5.12.09

Date

